No. _____

In the Supreme Court of the United States

ALT'S DAIRY FARM, LLC,
Petitioner,
v.
NAU COUNTRY INSURANCE COMPANY,
Respondent.

BACHMAN SUNNY HILL FRUIT FARMS, INC.,
Petitioner,
v.
PRODUCERS AGRICULTURE INSURANCE COMPANY,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Every federally sanctioned crop insurance policy requires that the insured and insurer enter into what is known as the Common Crop Insurance Policy, the terms of which are set out in a federal regulation, 7 C.F.R. §457.8. That policy contains a provision requiring arbitration of any disputes. That policy further allows either party to seek judicial review of an arbitrator's decision by filing suit "not later than one year after the date the arbitration decision was rendered."

Section 12 of the Federal Arbitration Act, 9 U.S.C. §12, provides that a motion to vacate, modify, or correct an arbitration award must be made within three months after the award is rendered.

The petitioners in these two cases purchased crop insurance policies and, following disputes with the insurance companies that issued those policies, took those disputes to arbitration where they were unsuccessful. The petitioners then filed federal court actions within one year of the arbitration decisions, but outside the three month period provided in 9 U.S.C. §12.

The questions presented are: Is the timeliness of petitioners' district court actions governed by the one-year period provided in the Common Crop Insurance Policy or by §12 of the Federal Arbitration Act? And, if the latter controls, may the time period for challenging an arbitration decision provided in that statute be extended by agreement of the parties?

CORPORATE DISCLOSURE STATEMENT

There are no parent or publicly held companies owning 10% or more of the stock of either of the two petitioners, Alt's Dairy Farm, LLC or Bachman Sunny Hill Fruit Farms, Inc.

RELATED PROCEEDINGS

There are no proceedings that are directly related to this case.

TABLE OF CONTENTS

APPENDIX

TABLE OF CITED AUTHORITIES

CASES

STATUTES

REGULATIONS

OTHER AUTHORITIES

OPINIONS BELOW

The Sixth Circuit's opinion in *Bachman Sunny Hill Fruit Farms, Inc v. Producers Agriculture Insurance Company* (App 1-17) is published at 57 F.4th 536. The district court's ruling is unpublished and is reproduced at App 32-40.

The Sixth Circuit's opinion in *NAU Country Insurance Company v. Alt's Dairy Farm, LLC*, is available at 2023 WL 152475 and is reproduced at App 42-51. The district court's ruling is unpublished and is reproduced at App 69-79.

JURISDICTION

The Sixth Circuit issued its decision in both of these cases on January 11, 2023. This Court has jurisdiction under 28 U.S.C. §1254.

STATUTORY PROVISIONS AND REGULATIONS INVOLVED

The relevant statutory provision is §12 of the Federal Arbitration Act, 9 U.S.C. §12, reproduced at App 84.

The Common Crop Insurance Policy is provided by regulation, 7 C.F.R. §457.8. The relevant portions of §20 of that policy, which govern the arbitration of any disputes arising out of that policy, are reproduced at App 85-87.

Another regulation of relevance is 7 C.F.R. §400.766(b), which provides the process for seeking a request for a final agency determination from the Federal Crop Insurance Corporation. The relevant

portions of that regulation are reproduced at App 88-90.

STATEMENT OF THE CASE

A. Legal Background

The federal government became involved in the first federally sponsored crop insurance program with the enactment of the Federal Crop Insurance Act (FCIA) of 1938. That Act established a government owned corporation, the Federal Crop Insurance Corporation (FCIC), as an agency within the United States Department of Agriculture, charged with "promot[ing] the national welfare by improving the economic stability of agriculture through a sound system of crop insurance . . ." 7 U.S.C. §1502(2).

Forty-two years later, Congress significantly expanded the federal crop insurance program with the enactment of the Federal Crop Insurance Act of 1980. Up to that point, it was only the FCIC that issued and serviced crop insurance policies. *Ackerman v. United States Dep't of Agriculture*, 995 F.3d 528, 529 (6th Cir. 2021). The 1980 Act altered this by authorizing the use of private insurance companies, referred to in the FCIA as "approved insurance providers," 7 U.S.C. §1502(b)(2), to sell crop insurance and handle resulting claims. 7 U.S.C. §1508. When specified eligibility conditions are met, the FCIC reinsures the approved insurance provider's losses and reimburses their administrative and operating costs.

To qualify for reimbursement through the FCIC, all approved insurance providers must comply with the FCIA and its governing regulations. All approved

insurance providers issue a uniform policy that is drafted by the FCIC, known as the Common Crop Insurance Policy (CCIP). The text of that Policy is provided in a federal regulation, 7 C.F.R. §457.8.

Section 20 of the CCIP provides for mandatory arbitration of any dispute that arises between an approved insurance provider and an insured. (App 85-87). Arbitration of disputes under the CCIP differs from standard arbitration proceedings in several respects. As the Fourth Circuit has observed, "the unusual world of federal crop insurance does, in fact, appear to leave very little decision making authority to the arbitrator." *Williamson Farm v. Diversified Crop Ins. Services*, 917 F.3d 247, 255 (4th Cir. 2019). An arbitrator selected to resolve such a dispute is precluded from interpreting the policy. Section 20(a)(1) of the CCIP provides that if a dispute arises which "in any way involves a policy or procedure interpretation, regarding whether a specific policy provision or procedure is applicable to the situation, how it is applicable, or the meaning of any policy provision or procedure," the parties must first obtain an interpretation from the FCIC. (App 85). The failure of the parties to first obtain an interpretation of the policy from the FCIC "will result in the nullification of any agreement or award." CCIP, §20(a)(1)(ii) (App 86).

The applicable regulations further provide that a request for an interpretation from the FCIC, referred to as a final agency determination, 7 U.S.C. §1506(r)(1), may be made at any stage in the process, including after an arbitration award is rendered. 7 C.F.R. §400.766(b)(3). (App 89).

Section 20(b) of the CCIP provides for judicial review of an arbitrator's award. (App 86-87). That section specifies that either party to the arbitration has the right to judicial review of any decision rendered in arbitration. CCIP, §20(c). (App 87). The CCIP further specifies that if a party seeks judicial review, "suit must be filed not later than 1 year after the date the arbitration decision is rendered." CCIP, §20(b)(3). (App 87).

B. Factual Background and Procedural History – Alt's Dairy

Dan, Tom and Joe Alt are brothers who operate a farm in Kent County, Michigan, on which they grow apples. For several years prior to 2017, Alt's Dairy insured their apple crop through an approved insurance provider, NAU Country Insurance Company ("NAU"). The policies that NAU issued to Alt's Dairy are federal crop insurance policies sold pursuant to the FCIA. Like all other producers obtaining federally approved crop insurance policies, among the policies that Alt's Dairy entered into with NAU was the CCIP.

In insuring their apple crop for the years 2016 and 2017, the Alt brothers wanted to obtain additional coverage, the Fresh Fruit Quality Endorsement. This additional coverage would insure Alt's Dairy's apple crop not only against a decrease in the quantity of their crop, but also a decrease in its quality.

To qualify for this Fresh Fruit Quality Endorsement, Alt's Dairy had to meet certain requirements of fresh apple production in one or more of the four most recent crop years. In 2016, NAU

reviewed Alt's Dairy's apple production for that four year period and determined that it met the requirements for the Fresh Fruit Quality Endorsement in the crop year 2013. In reliance on NAU's determination, Alt's Dairy paid the additional premium necessary for the fresh fruit coverage for both the 2016 and 2017 crop years.

In 2017, Alt's Dairy suffered extensive damage to its apple crop due to freezing, which damaged the quality of its apples. When Alt's Dairy submitted a claim for the damage caused to its 2017 crop to NAU, a different NAU claims adjuster re-examined Alt's Dairy's 2013 apple production that had been reviewed the previous year and reversed the determination that Alt's Dairy's 2013 crop met the threshold for the Fresh Fruit Quality Endorsement. Based on this reexamination, NAU concluded that Alt's Dairy's 2013 production did not meet the requirements for fresh fruit coverage and that it no longer qualified for that coverage during the crop year 2017.

Alt's Dairy demanded arbitration of the dispute over coverage to its 2017 crop losses under §20 of the CCIP. An arbitration hearing was conducted over a two-day period in January 2020. The arbitrator on March 11, 2020, issued an award. While noting that "the equities in this case greatly favor" Alt's Dairy, the arbitrator ruled that Alt's Dairy's claim would be denied in its entirety.

Following the release of the arbitrator's decision, Alt's Dairy did not immediately seek judicial review of the arbitrator's ruling. Instead, it submitted a request for a final agency determination to the FCIC pursuant to §20 of the CCIP. That request sought clarification of

how fresh apple production was to be determined for purposes of the Fresh Fruit Quality Endorsement that Alt's Dairy had purchased.

On July 1, 2020, prior to the FCIC issuing a final agency determination on the request filed by Alt's Dairy, NAU filed a petition in the United States District Court for the Western District of Michigan seeking confirmation of the arbitrator's award.

On July 21, 2020, the FCIC issued a final agency determination, FAD-295, based on Alt's Dairy's post-arbitration request. That final agency determination agreed in part with Alt's Dairy's arguments as to how fresh apple production was to be determined.

On August 28, 2020, Alt's Dairy filed in the district court both an answer to NAU's petition to confirm the arbitration award and a counter-petition seeking nullification of the arbitrator's award under §20(a)(1) of the CCIP and 7 C.F.R. §400.766(b)(3). In its counter-petition, Alt's Dairy asserted that the arbitrator's decision was not consistent with the final agency determination, FAD-295, that FCIC had issued after the arbitrator issued his award.

NAU moved to dismiss Alt's Dairy's counter-petition and to confirm the arbitrator's March 11, 2020 award. NAU argued in that motion that Alt's Dairy's counter-petition had to be dismissed because it was filed outside of the three-month period for a motion to "vacate, modify or correct" an arbitration award provided in §12 of the Federal Arbitration Act ("FAA"), 9 U.S.C. §12.

The district court conducted a hearing on NAU's motion to dismiss at which it ruled that Alt's Dairy had forfeited the right to judicial review of the arbitrator's decision by failing to serve notice of its challenge to that decision within three months of the arbitrator's award. (App 32-40).

Alt's Dairy appealed to the Sixth Circuit from the district court's judgment.

C. Factual Background and Procedural History – Bachman Farms

Gregg Bachman grows apples and other crops under the corporate name Bachman Farms on a farm located in Fairfield County, Ohio. For several years prior to 2017, Bachman Farms insured its apple crop through an FCIA approved insurance provider, Producers Agriculture Insurance Company ("Pro Ag").

In addition to the CCIP, the FCIC also issues a compilation of loss adjustment procedures that govern apple crop loss claims. These procedures are contained in two handbooks prepared by the FCIC, the Loss Adjustment Manual Standards Handbook ("LAM") and the Apple Loss Adjustment Standards Handbook ("Apple LASH").

In July 2017, while the policies that Pro Ag issued to Bachman Farms were in effect, hail damaged Bachman Farms' apple crop. Bachman Farms submitted a notice of loss to Pro Ag, which paid only a small portion of the damage that Bachman Farms claimed.

Invoking §20 of the CCIP, Bachman Farms called for arbitration of its dispute with Pro Ag. An arbitration hearing was conducted over a two day period in February 2020. A significant issue litigated at that arbitration was whether the two handbooks issued by the FCIC, the LAM and the Apple LASH, were incorporated into the parties' agreement. Central to Bachman Farms' position during the arbitration proceeding was that these two handbooks were part of the parties' agreement.

The arbitrator on March 26, 2020 issued an award in which he rejected Bachman Farms' argument that the two FCIC handbooks were incorporated into the parties' agreement and he denied Bachman Farms' claims in their entirety.

Bachman Farms did not immediately seek judicial review of the arbitrator's decision. Instead, in May 2020, Bachman Farms submitted a request for a final agency determination to the FCIC pursuant to §20 of the CCIP and 7 C.F.R. §400.766(b)(4). That request sought the FCIC's determination on the issue that the arbitrator had decided against Bachman Farms – whether the two FCIC handbooks that Bachman Farms relied on were incorporated into the parties' policies.

On August 4, 2020, the FCIC issued a final agency determination, FAD-298, based on Bachman Farms' post-arbitration request. Contrary to the conclusion reached by the arbitrator, the FCIC concluded in FAD-298 that, pursuant to the CCIP, the procedures provided in the LAM and the Apple LASH were part of the parties' agreements.

On November 19, 2020, Bachman Farms filed a petition to nullify the March 26, 2020 arbitration award in the United States District Court for the Western District of Michigan. In its petition, Bachman Farms asserted that, on the basis of the FCIC's August 4, 2020 final agency determination, the arbitration award had to be nullified because the arbitrator had improperly interpreted the CCIP in concluding that the LAM and the Apple LASH handbooks were not incorporated into the parties' policies.

Pro Ag filed a motion to dismiss Bachman Farms' petition in which it argued, among other things, that Bachman Farms' petition to nullify was subject to dismissal because it was filed outside of the three-month period provided in §12 of the FAA.

The district court conducted a hearing on Pro Ag's motion to dismiss at which it ruled that Pro Ag's motion would be granted. The district court found that Bachman Farms "forfeited their right to judicial review of the award," based on its failure to comply with §12 of the FAA. (App 38).

Bachman Farms appealed the dismissal of its petition to the Sixth Circuit.

D. The Sixth Circuit Decisions

The Sixth Circuit held oral argument in *Alt's Dairy* and *Bachman Farms* on successive days in July 2022. The Court issued decisions in the two cases on the same day, January 11, 2023, affirming the district court's rulings in both cases. (App 1-17; App 42-51).

In its published decision in *Bachman Farms*, the Sixth Circuit first rejected petitioner's argument that the FAA was inapplicable to a petition seeking nullification of an arbitrator's award under the provisions of the CCIP.[1] (App 7-14).

After disposing of this issue, the Sixth Circuit turned to the question of whether the three month time limit of §12 of the FAA barred Bachman Farm's petition to nullify. Bachman Farms had argued that the underlying purpose of the FAA was to enforce arbitration agreements as they are written. That statutory premise, Bachman Farms argued, called for enforcing the one-year time limit incorporated into §20(b)(3) of the CCIP. The Sixth Circuit rejected this argument, concluding that the FAA's statutory purpose requiring enforcement of arbitration agreements, "does not mean that parties can agree to alter the FAA itself." (App 15).

Finally, the Sixth Circuit rejected Bachman Farm's alternative argument that the one year time period for judicial review provided in the parties' policy had to be given effect because the parties were free to extend the

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[1] Bachman Farms offered this argument in both the district court and the Sixth Circuit on the basis of 2018 public comments made by the FCIC. 83 Fed.Reg. 66574-66576 (2018). In these public comments, the FCIC took the position that, pursuant to a provision in the FCIA, 7 U.S.C. §1506(r), the nullification of an arbitration award under §20(a)(1)(i) of the CCIP or 7 C.F.R. §400.766(b)(3) took precedence over the provisions of the FAA. Thus, the FCIC claimed that the "nullification" of an arbitrator's award in a dispute involving crop insurance, did not represent a request to "vacate, modify, or correct" an arbitration award as provided in §12 of the FAA.

three month period provided in §12 of the FAA by agreement. The Sixth Circuit acknowledged that the parties could, by agreement, agree to shorten a statute of limitations, but it held that an agreement to extend the time period provided in §12 would not be enforced. (App 16).

The same day as the *Bachman Farms* opinion was released, the Sixth Circuit reached a similar conclusion in *Alt's Dairy*.[2] (App 42-51). The Sixth Circuit ruled in that case that "[b]ecause the petition was file more than five months after the entry of the arbitration award, it is untimely because the FAA is the exclusive remedy here. . ." (App 50).

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[2] The Sixth Circuit also concluded that Alt's Dairy had failed to state a claim because it did not plead a claim under the FAA. (App 49). To the extent that the Sixth Circuit offered this purported pleading deficiency as a ground for dismissing Alt's Dairy's counter-petition that was separate from the timeliness of that counter-petition under the FAA, the Sixth Circuit was wrong. It is true that Alt's Dairy's original counter-petition to nullify the arbitration award made no reference to the FAA. But, when NAU filed its motion to dismiss, Alt's Dairy responded by moving to amend its counter-petition to add a claim under the FAA. The district court heard argument on Alt's Dairy's motion to amend at the same hearing at which it heard NAU's motion to dismiss. The district court found that the FAA's three month time limit controlled. On that basis, the district court concluded that any amendment of Alt's Dairy's counter-petition would be futile because that counter-petition was filed too late to comply with the FAA. (App 79). Contrary to the suggestion in the Sixth Circuit's opinion, Alt's Dairy's purported failure to state a claim under the FAA was not a basis for rejecting petitioner's claim that was somehow independent of the timeliness of its counter-petition under the FAA.

REASONS FOR GRANTING THE PETITION

The petitioners, like all other producers who enter into a policy for federally approved crop insurance,[3] signed an agreement, the CCIP, that called for mandatory arbitration of any dispute. The agreements petitioners and respondents signed further specified that either party could seek judicial review of an adverse arbitration decision if they instituted an action within one year of the arbitrators' decisions. CCIP, §20(b)(3) (App 87). In mounting their federal court challenge to the arbitrators' awards, petitioners complied with the time restrictions contained in their policy. The Sixth Circuit held, however, that the contents of petitioners' policies were irrelevant in determining the timeliness of their district court filings. Because petitioners failed to comply with the three month period provided in §12 of the FAA, the Sixth Circuit concluded that the district court properly dismissed petitioners' claims.

The initial question presented by the Sixth Circuit's rulings is whether, under the structure and purpose of the FAA, the timeliness of the district court actions that petitioners filed should be controlled by the contents of their policies or, as the Sixth Circuit concluded, by the Act.

The policies that petitioners entered into should be relevant in determining the timeliness of their district

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[3] As the Sixth Circuit decision in *Bachman Farms* confirms, this encompasses a significant number of crop insurance policies. The Sixth Circuit estimated that there were in excess of 380,000 farms enrolled in crop insurance programs in 2017 alone. (App 3).

court actions. The FAA was designed to overcome long-standing judicial hostility to arbitration agreements and to place arbitration agreements on the same footing as other contracts. *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 510-511 (1974). The FAA "was motivated, first and foremost, by a unquestionable desire to enforce arbitration agreements which parties had entered." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 220 (1985); see also *Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407, 1412 (2019).

The text of the FAA references its underlying purpose that arbitration agreements are to be enforced as they are written. Section 2 of the Act declares that an agreement in writing to submit an existing controversy to arbitration "should be valid, irrevocable, and enforceable." 9 U.S.C. §2. Section 4 of the Act provides parties who are signatories to an arbitration agreement the right to obtain a court order directing that "arbitration proceed in the manner *provided for in [the parties'] agreement*." 9 U.S.C. §4 (emphasis added). And, where a suit has been filed in a case governed by an arbitration agreement, the FAA calls for a stay "until such arbitration has been had *in accordance with the terms of the agreement*." 9 U.S.C. §3 (emphasis added).

As this Court held in *Volt Information Sciences, Inc. v. Board of Trustees of the Leland Stanford Junior University*, 489 U.S. 468, 478 (1989), the FAA "simply requires courts to enforce privately negotiated agreements to arbitrate like other contracts, according to their terms." *See also Lamps Plus*, 139 S. Ct. at 1412. The Court in *Volt* further emphasized that

"[t]here is no federal policy favoring arbitration under a certain set of procedural rules; the federal policy is simply to ensure the enforceability according to their terms, of private agreements to arbitrate." *Id.*, at 478.

The Sixth Circuit in its decision in *Bachman Farms* acknowledged that "in principle," courts are to enforce arbitration agreements as they are written (App 15). But, it added that "the rule requiring judicial enforcement of arbitration agreements does not mean that the parties can agree to alter the FAA itself." *Id.*

This Sixth Circuit's qualification of the basic rule requiring courts to enforce arbitration agreements as they are written is difficult to harmonize with this Court's holding in *Volt* that "it does not follow that the FAA prevents the enforcement of agreements to arbitrate under different rules than those set forth in the Act itself." 489 U.S. at 479; see also *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612, 1621 (2018) (the FAA "requires courts 'rigorously' to enforce arbitration agreements according to their terms, including *the rules* under which the arbitration will be conducted.") (emphasis in original). This Court has further stressed that the limitations imposed in the parties' agreement to arbitrate are to be enforced since "courts and arbitrators must not lose sight of the purpose of the exercise: to give effect to the intent of the parties." *Stolt-Nielsen SA v AnimalFeeds Int'l Corp.,* 559 U.S. 662, 683 (2010).

Since courts are required to "enforce arbitration agreements according to their terms," and to give effect to the intent of the parties, it is the time periods for seeking judicial review that the petitioners and

respondents agreed to in the CCIP that should control here. Because the underlying purpose of the FAA is to enforce the terms of arbitration agreements that parties enter into, the Sixth Circuit erred in failing to apply the one-year period for seeking judicial review provided in §20(b)(3) of the CCIP.

The longer period for seeking judicial review of an arbitration decision arising out of a crop insurance dispute provided in the CCIP is also necessary to take into account a unique feature of such disputes. The authority of arbitrators in such disputes is circumscribed; they are not to engage in any interpretation of the CCIP. CCIP, §20(a)(1) (App 85-86). Instead, where any policy interpretation is involved, a final agency determination must be sought from the FCIC. What is unusual under the regulatory framework governing crop insurance disputes is that this resort to a final agency determination mandated by the policy may take place before or during the arbitration process. But the applicable regulations also contemplate that a demand for a final agency determination may take place even *after* an arbitration award is rendered. 7 C.F.R. §400.766(b)(4). (App 89).

Thus, in crop insurance disputes, there may be an additional level of required administrative review that takes place between the time that the arbitrator renders a decision and the date that judicial review of that decision is sought. These two cases illustrate this additional post-arbitration administrative review. In both of these cases, following the release of the arbitrators' awards, both Alt's Dairy and Bachman Farms filed with the FCIC requests for final agency

determinations, claiming that the arbitrators improperly engaged in contract interpretation in entering their awards. Petitioners then sought judicial review in federal court on the basis of the FCIC's final agency determinations. And, by that time this additional level of administrative review was completed, the three month period of §12 of the FAA had expired.[4]

For these reasons, the Court should consider the question of whether the timeliness of petitioners' filings seeking judicial review of the arbitrators' decisions should be governed by the contents of the contracts that they and the respondents entered into.

But even if the three month period in §12 of the FAA is construed as a statute of limitations[5] – a filing period that must be complied with – this case presents the additional question of whether the parties may by agreement extend such a limitations period.

In their Sixth Circuit briefs, petitioners relied on this Court's decision in *Heimeshoff v. Hartford Life &*

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[4] It is also notable that, by regulation, the FCIC is to provide a written decision on any request for a final agency determination within 90 days, 7 C.F.R. §400.768(e), the same time period provided in §12 of the FAA.

[5] 'Section 12's three month period has been described as a statute of limitation in various Court of Appeals opinions. *McLaurin v. Terminex Int. Co., LP*, 13 F.4th 1232, 1238-1239 (11th Cir. 2021); *Teamsters Local 177 v. United Parcel Service*, 966 F.3d 245, 255 (3d Cir. 2020); *United States v. Park Place Associates, Ltd.*, 563 F.3d 907, 919, n. 8 (9th Cir. 2009); *Webster v. A.T. Kearney, Inc.*, 507 F.3d 568, 570 (7th Cir. 2007).

Accident Ins. Co., 571 U.S. 99 (2013), in support of their argument that the parties could agree to extend a limitations period by agreement. In *Heimeshoff*, the Court recognized that "parties are permitted to contract around a default statute of limitations." *Id.*, at 107. Based on *Heimeshoff*, petitioners contended that the parties had agreed by entering into the CCIP to extend the three month period provided in §12.

The Sixth Circuit in *Bachman Farms* dismissed petitioners' reliance on *Heimeshoff*, concluding that this Court's decision in that case represented only a statement of "the well-accepted rule that parties can agree to *shorten* a default statute of limitations." (App 16) (emphasis in original). In announcing this decision, the Sixth Circuit did not explain why freedom of contract, in the context of private agreements to adjust statutes of limitations, would operate in only one direction.

It is, however, clear that the Sixth Circuit's reading of the implications of this Court's holding in *Heimeshoff* differs from that of at least one other circuit. In *National Credit Union Administration Board v. Barclays Capital Inc.*, 785 F.3d 387 (10th Cir. 2015), the Tenth Circuit cited this Court's ruling in *Heimeshoff* in support of the proposition that "[f]ederal statutes of limitation can often be tolled by agreement." *Id.*, at 392. The Tenth Circuit has, therefore, interpreted this Court's decision in *Heimeshoff* as allowing parties to extend, not merely shorten, limitations periods by agreement.

The Sixth Circuit's holding that the three month filing period called for by §12 of the FAA could not be

altered by agreement of the parties is also in conflict with the Second Circuit's decision in *Photopaint Technologies, LLC v. Smartlens Corp.*, 335 F.3d 152 (2d Cir. 2003). The central issue in *Photopaint* involved another time limitation imposed by the FAA, §9 of the Act, 9 U.S.C. §9. That section provides that a party who has prevailed in arbitration may apply to a court to confirm the arbitration award, "at any time within one year after the award is made."

In *Photopaint*, the arbitrator rendered an award in favor of the plaintiff in May 2000. After the award was entered, the parties entered into settlement negotiations, which included a series of letter agreements to allow for further settlement discussions. The parties' discussions to resolve their dispute ultimately broke down after the one year anniversary of the arbitration award and the plaintiff filed a federal court petition to enforce that award. The defendant successfully moved in the district court to dismiss plaintiff's petition on the ground that it was filed beyond the one year period provided in §9 of the FAA.

On appeal to the Second Circuit, that Court first had to resolve a question that had divided federal courts – whether the one-year time period in §9 of the FAA is a statute of limitations. The Second Circuit concluded in *Photopaint* that §9 did, in fact, represent a statute of limitations. *Photopaint*, 335 F.3d at 156-160. Despite that holding, the Court in *Photopaint* reversed the district court's grant of summary judgment. The Court did so citing the agreements that the parties signed in the wake of the arbitrator's decision. The Second Circuit concluded that dismissal

of the plaintiff's complaint based on §9 of the FAA was improper, "because the undisputed record establishes as a matter of law, that [the parties] agreed to toll any applicable limitations periods imposed under the FAA." *Id.*, at 160.

The Sixth Circuit held in these two cases that a limitations period provided in the FAA could not be extended on the basis of an agreement between the parties. The Second Circuit in *Photopaint* reached precisely the opposite conclusion – a time limitation provided in that Act may be extended by an agreement reached by the parties. See also Restatement (Third) of U.S. Law of International Commercial Arbitration, §4.30(f) (Proposed Final Draft, April 24, 2019).

These cases, therefore, present several fundamental questions about the relationship between private agreements and the FAA and they present these questions in the context of contractual language that is found in every federally sanctioned crop insurance policy. Presented in these cases is the question of whether a private agreement to arbitrate can include a provision that supersedes a time limitation provided in the FAA. In addition, these cases present an opportunity for the Court to clarify the reach of its decision in *Heimeshoff*. Finally, these cases offer the opportunity to determine whether the Second Circuit or the Sixth Circuit has correctly decided the question of whether a filing period contained in the FAA may be extended by an agreement reached by the parties.

CONCLUSION

Based on the foregoing, the petition for writ of certiorari should be granted.

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